

1                                   **STATE OF NEW HAMPSHIRE**2                                   **SITE EVALUATION COMMITTEE**3       **July 24, 2015** - 9:02 a.m.4       Public Utilities Commission  
5       21 South Fruit Street Suite 10  
6       Concord, New Hampshire\* \* **DELIBERATIONS** \* \*7                   In re:   **SITE EVALUATION COMMITTEE:**  
8                               **DOCKET NO. 2014-05: Petition**  
9                               **for Jurisdiction over a Renewable**  
10                              **Energy Facility by Antrim Wind,**  
11                              **LLC, and Others.**  
12                              **(Deliberations)**13       **PRESENT:**13       **SITE EVALUATION COMMITTEE:**14       Chrmn. Martin P. Honigberg  
14       (Presiding as Chairman of SEC)

Public Utilities Commission

15       Cmsr. Robert R. Scott  
16       Dir. Eugene Forbes, Designee  
16       Dir. Elizabeth Muzzey  
17       Cmsr. Jeffrey RosePublic Utilities Commission  
DES-Water Division  
DCR-Div. of Historical Res.  
Dept. of Resources and  
Economic Development17       Patricia Weathersby  
18       Roger HawkPublic Member  
Public Member21       *Counsel to the Committee:*Michael J. Iacopino, Esq.  
(Brennan Lenehan)23                   COURT REPORTER:   *Steven E. Patnaude, LCR No. 52*

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<b>MOTION BY COMMISSIONER SCOTT</b> to	32
take jurisdiction, with the caveat	
that the application would need to	
be filed within the next six months	
<b><i>SECONDED BY COMMISSIONER ROSE</i></b>	33

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**P R O C E E D I N G**

CHAIRMAN HONIGBERG: We're going to open the session this morning, which is deliberations on the Antrim Wind and the Town of Antrim's Petition for Jurisdiction. It's possible that the seventh member of the Subcommittee will not be here at all today. He's got another obligation. He may be here, but we're not certain.

We're going to step out for a few minutes, however, and have a discussion with our lawyer, which is something we feel we need to do this minute. But we shouldn't be gone long. Thank you.

(Recess taken at 9:03 a.m. for Subcommittee members to confer with Counsel to the Committee, and the deliberations resumed at 9:39 a.m.)

CHAIRMAN HONIGBERG: All right. Good morning. We've had an opportunity to confer with counsel on a variety of legal issues. And, I think we're ready to start discussing the merits of the jurisdiction petition before us. There is no other graceful way to do this but to ask for someone to start a discussion about what they think, based on what we've seen, heard, and read.

All right. Why don't we, before we do

1       that, it's been suggested that perhaps we should go around  
2       the room and identify all of the members of the  
3       Subcommittee who are here today.

4                   COMMISSIONER SCOTT: Good morning. I'm  
5       Bob Scott, with the Public Utilities Commission.

6                   CHAIRMAN HONIGBERG: Martin Honigberg,  
7       with the Public Utilities Commission.

8                   DIRECTOR MUZZEY: Elizabeth Muzzey,  
9       Department of Cultural Resources.

10                  MS. WEATHERSBY: Patricia Weathersby,  
11       public member.

12                  MR. HAWK: Roger Hawk, a public member.

13                  COMMISSIONER ROSE: Good morning. Jeff  
14       Rose, Commissioner of the Department of Resources &  
15       Economic Development.

16                  DIRECTOR FORBES: Eugene, with the New  
17       Hampshire Department of Environmental Services, here as a  
18       designee for Commissioner Tom Burack.

19                  CHAIRMAN HONIGBERG: And, with us is our  
20       counsel, Mike Iacopino. And, who would like to open the  
21       discussion? Commissioner Scott.

22                  COMMISSIONER SCOTT: First, I'd like to  
23       start with, and I know the Committee knows this, but we're  
24       not here to decide whether we should grant a certificate,

1 but merely whether we should take jurisdiction. And, I  
2 think sometimes that gets lost in some of the -- some of  
3 the discussions in testimony.

4 Having said that, it's pretty clear to  
5 me, in looking at 162-H, that certainly, in a vacuum, a  
6 project of this size is discretionary whether the  
7 Committee takes jurisdiction or not. And, having read  
8 some of the -- well, all the arguments presented before  
9 us, and listened to the arguments presented before us, I  
10 don't see that we're compelled legally one way or the  
11 other, to either take jurisdiction or not jurisdiction.  
12 So, I don't think there's a mandatory legal requirement.  
13 I'll caveat by saying I'm one of the -- I'm an engineer,  
14 not an attorney, but I do work from a bench, so...

15 And, having said that, I also will note,  
16 similar to the original 2011 jurisdictional proceeding,  
17 which I was part of, here we have the Town, the Board of  
18 Selectmen, the Planning Board, 100-person petition asking  
19 for us to take jurisdiction. And, I will say, if the  
20 Project, the exact Project as laid out before us, even  
21 though we don't have an application in this case, was  
22 before me, with a different name on it, I think I would be  
23 asking to take jurisdiction. So, there's a -- at least  
24 that's my bias. I was part of the original jurisdictional

1 hearing, as I mentioned, and I did think we should take  
2 jurisdiction. And, primarily based on the testimony of  
3 the Town saying that they "did not have the wherewithal to  
4 meet the goals of 162-H".

5 So, what, at least in my mind, this all  
6 boils down to is the subject of a "material change". And  
7 that, to me, is the crux of the matter.

8 Again, granting a certificate is not  
9 what we're here for. It's more for jurisdiction.  
10 Clearly, the SEC has demonstrated that they have the  
11 ability and the wherewithal to deny a certificate for  
12 projects, certainly one in this location.

13 And, with that, too, I question whether,  
14 again, a lot of the testimony to me seemed to be based on  
15 whether we should accept the Project or grant a  
16 certificate, not take jurisdiction. I don't think it's  
17 the same level of evidence. And, it also reminds me that,  
18 if we were to be ruling on the certificate itself, we  
19 would have gone to -- our customary way of doing things is  
20 the members would have gone out to do a site survey, so  
21 they could get a better appreciation for the aesthetics  
22 and the location. That wasn't before us, I think.

23 So, not being asked at this point, but,  
24 in aggregate, I guess the question is is, "in aggregate,

1 are there enough changes to this Project to be a material  
2 change?" We've talked about, certainly, there's nine  
3 towers, instead of ten. I was taken a little bit aback  
4 with the Counsel for the Public's witness, you know, I  
5 questioned her of, you know, "is there a bright line?"  
6 And, what I think I really heard was "the bright line  
7 would be, if it's acceptable to grant a certificate, then  
8 it would be okay to take jurisdiction." And, I'm not  
9 quite sure I agree with that as the -- as the line we  
10 should be looking at for "material change".

11 So, I guess I'll stop there for now.  
12 But those are my thoughts, if that helps.

13 CHAIRMAN HONIGBERG: I want to take on  
14 one, one thing you said, and agree with the notion that we  
15 are not "required" to take jurisdiction over this, in my  
16 opinion. It's been argued to us that a line of cases that  
17 got discussed under the "*Dover versus Fisher*" sort of  
18 heading, compels us to take jurisdiction over this matter,  
19 over this Project, I guess, in whatever form it's filed.  
20 I disagree with that. I don't think that line of cases  
21 controls this situation for a variety of reasons, much of  
22 which are legal. But we are not -- we are not a mandatory  
23 jurisdiction body, like the local municipal bodies that  
24 were at issue in those cases. This is not a situation

1 where we need to review anything in particular. Our  
2 jurisdiction over a project like this is discretionary.

3 The result of the last proceeding before  
4 the SEC on this Project, which was the rejection of the  
5 Application for a Certificate, ended in a somewhat odd  
6 way, but it ended with a denial ultimately, and a  
7 rejection of a Motion for Rehearing or Reconsideration.  
8 In the context of rejecting that, there was a discussion  
9 about possible changes to the Application. Whatever was  
10 said in that context is not binding on this body. We are  
11 not required, in my view, under that line of cases, to  
12 take that, to take this matter.

13 I won't take on everything Commissioner  
14 Scott said. There are some things I disagree with. But I  
15 want to give others an opportunity to weigh in at this  
16 time, on anything, really. Director Muzzey.

17 DIRECTOR MUZZEY: Thank you. I also was  
18 on the jurisdictional proceeding several years ago. And,  
19 at that time was with the group that was not in favor of  
20 taking the jurisdiction. That being a split decision at  
21 that time as well. And, my memory of that proceeding is  
22 that it did differ somewhat from this one in that the  
23 Planning Board and the Selectboard were not in agreement  
24 as to whether or not the State should take jurisdiction on



1       that matter. It seems that, in the years since, there  
2       have been changes to the membership of the Planning Board,  
3       and that now the Planning Board and the Selectboard do  
4       seem to be on the same page with the request for the State  
5       to take jurisdiction.

6               That being said, I do think in the years  
7       since the Planning Board has also shown that it has acted  
8       in good faith with this Project. It has reviewed -- I  
9       believe we heard testimony that they have reviewed two  
10      things that relate to this facility. Those reviews seem  
11      to have gone well. The requests were granted. We also  
12      heard testimony that the ZBA has looked at what might be  
13      considered similar projects, such as a cell tower, and  
14      that was approved in the last few years. The Planning  
15      Board seems to review large projects under site plan  
16      review every -- I believe we heard "two to four a year".

17             And, so, given those types of  
18      activities, as well as other testimony, it seems that, to  
19      me, that the Town is now, I'm not sure what the proper  
20      word is, but things seem to be going more smoothly between  
21      the Planning Board, the Selectboard, and other aspects of  
22      Town government, and that, although they don't have a  
23      large wind ordinance in place, they do seem to be working  
24      well as a municipality to review projects.

1 CHAIRMAN HONIGBERG: Commissioner Scott.

2 COMMISSIONER SCOTT: So, Director  
3 Muzzey, having said that, can you reconcile for me, I  
4 concur that, obviously, we -- now given the petitions  
5 before us, there's more unanimity within the Town, but  
6 that unanimity is to ask us that we should take  
7 jurisdiction. Can you help me with that?

8 DIRECTOR MUZZEY: Well, and for me, the  
9 difficulty with that is, when both asked, I believe it was  
10 the Applicant, the Planning Board and Selectboard, the  
11 reasons that they -- the reason that they gave, I believe  
12 100 percent gave, was a fear of lawsuit. Which that is --  
13 that's not one of our specific criteria at 162-H:1, as to  
14 whether or not we take -- we take jurisdiction of a  
15 project.

16 So, I would feel more comfortable  
17 looking at 162-H:1 as to whether or not the State should  
18 take jurisdiction, as opposed to just responding to the  
19 Town's fear of a lawsuit. The State also can be sued.

20 CHAIRMAN HONIGBERG: Commissioner Rose.

21 COMMISSIONER ROSE: Thank you. And, I  
22 appreciate Director Muzzey's comments regarding the  
23 alignment of the Planning Board and the Selectboard,  
24 because I do believe that is a fundamental difference when

1 the last jurisdictional consideration was before the Site  
2 Evaluation Committee. And, I agree with what Director  
3 Scott referenced in terms of the fact that they are both  
4 requesting the Site Evaluation Committee to take  
5 jurisdiction is significant, and was also one of the  
6 reasons why, in looking through the decision to take  
7 jurisdiction previously, that the Planning Board said that  
8 they -- it was one of the reasons for the descension  
9 amongst the Site Evaluation Committee, as the Planning  
10 Board referenced their efforts to try to move forward with  
11 a local ordinance and rules in order to address a wind  
12 project of this size. And, through multiple efforts, that  
13 has yet to take place. And, there's still -- those  
14 underlying conditions still remain in place today that  
15 were in place in 2011.

16 So, I do think that is a significant  
17 development, in that the Planning Board and the  
18 Selectboard are both aligned in their request to the  
19 State.

20 CHAIRMAN HONIGBERG: Commenting on that,  
21 the dynamic within the Town is interesting to me. And, I  
22 am trying to sort out how significant it should be that  
23 the elected officials seem to be in favor of this, but yet  
24 can't get through the legislative body, the town meeting,

1 anything that would help them get it done. So, what does  
2 that tell me about what the Town wants?

3 I mean, one could conclude from that,  
4 and I am not necessarily concluding this, but one could  
5 conclude from that scenario that the elected officials are  
6 concerned about getting reelected, and that they recognize  
7 that, in their view, that this would be a good thing to  
8 happen. But they're concerned that, if they're the ones  
9 who approve it, none of them will be elected anymore,  
10 because the Town's legislative body, and the people who  
11 come out to vote, don't support it and won't support them,  
12 if they are the ones who do this. Should that be  
13 significant to me?

14 I mean, I don't think that's part of our  
15 statute. I mean, our statute talks about whether --  
16 whether the project would be unduly delayed, whether  
17 timely consideration of things. I bet there is, as there  
18 is in every town, disagreements within the Town. Whether  
19 that should be significant to me is a hard one for me.  
20 But that's -- there's part of me that is thinking, if the  
21 elected officials wanted to get this done and get it  
22 reviewed and issue all the proper permits, they could do  
23 it. Now, they might get sued. I can almost guarantee you  
24 that whatever we do is going to get appealed to the

1 Supreme Court. So, everybody is -- you know, there is  
2 legal action all over the place likely with this. So,  
3 that's -- I'm not sure there's a difference, ultimately,  
4 in the amount of delay that would take place.

5 Ms. Weathersby.

6 MS. WEATHERSBY: With regard to the Town  
7 of Antrim and their ability to handle this, I have no  
8 doubt it would be less divisive for the Town and less  
9 expensive if we took jurisdiction. But those aren't  
10 reasons to take jurisdiction.

11 I think one thing that's changed since  
12 the earlier application is that the Town has a lot more  
13 experience with the issues that will come up. They have  
14 sat through the entire process of the first application.  
15 They have also drafted numerous wind ordinances, none of  
16 which have passed, but they certainly know the issues.  
17 They're also able, by statute, to hire experts to advise  
18 them at the Applicant's expense. And, I think that, as  
19 long as their land use boards make reasonable decisions  
20 that are supportable and utilize the benefit of their  
21 experts, that those decisions or conditions would be  
22 upheld.

23 So, I think the Town of Antrim is much  
24 better equipped now to handle this.

1 CHAIRMAN HONIGBERG: Commissioner Scott.

2 COMMISSIONER SCOTT: So, whoever would  
3 like to help me here, because I see, I guess, a  
4 counterargument. That the multiple attempts for town  
5 regulation that have failed for this type of project,  
6 whatever the motivations of either -- any of the parties  
7 would indicate to me that there's no structure to address  
8 this explicitly, this type of project in the Town.

9 So, again, I'm looking at not, again,  
10 whether the Project should ultimately be -- happen or not,  
11 but the goals of 162-H, and I'm still struck by the Town's  
12 tried multiple times to get a regulation in place, that's  
13 failed for whatever reason. And, we have the leadership  
14 of the Town, the Town, itself, saying "yes, there's" --  
15 you're right, they've stated a "threat of legal suits" as  
16 one of their compelling reasons. But what I'm hearing, I  
17 thought, was "we don't have the wherewithal to do this,  
18 you guys are better", meaning the SEC, "are better suited  
19 to meet these criteria."

20 So, help me we that argument. Where am  
21 I wrong there please?

22 MS. WEATHERSBY: The Town has in place  
23 more general land-use regulations and the Zoning Board has  
24 variance procedures. And, those general -- more general

1 framework can certainly be used to have this -- an  
2 application for a project like this go through those  
3 boards. And, those boards have the power to, you know,  
4 Zoning Board, to grant a variance, so that a use like this  
5 could be used in the district where it's now prohibited.  
6 The Planning Board has the ability to put on conditions of  
7 noise and -- through their general powers.

8 So, I think that, with the help of some  
9 experts, and knowing the issues, that the Town would be  
10 able, you know, with some difficulty, but, and length of  
11 hearings, but the Town could handle this. And, I think  
12 that the projects they have handled since this, at the  
13 town level, since the original application, shows that  
14 they can handle some things that are outside their usual  
15 scope.

16 CHAIRMAN HONIGBERG: Director Forbes.

17 DIRECTOR FORBES: I don't disagree that  
18 the Town seems to have all the authority and capability of  
19 managing this. I question whether or not they could do it  
20 in a timely manner, and would be able to, you know,  
21 adequately protect the interests of the State, and, you  
22 know, following the requirements of 162-H.

23 I think that there certainly is evidence  
24 that they have tried to do this. They have been unable to

1 do this. They may have the authority. They certainly,  
2 you know, could conceivably do it. But, you know, I  
3 really struggle with the issue of their ability to  
4 actually do it in a timely way, which is one of the  
5 directives of the statute that we should be here deciding  
6 on jurisdiction, to ensure that these issues are managed  
7 properly.

8 CHAIRMAN HONIGBERG: Director Muzzey.

9 DIRECTOR MUZZEY: We have heard that the  
10 Town has been able -- has been unable to pass at town  
11 meeting the large wind facility ordinance. That's what  
12 the Town has been unable to do. In order to review this  
13 wind facility project, they would not have to have that  
14 ordinance in place. In fact, if the Town had put an  
15 ordinance in place, it could have prohibited a facility  
16 such as this. It could have allowed for it or it could  
17 have prohibited it.

18 In the case of if that ordinance  
19 prohibited it or did not allow it as planned, the project  
20 proponent would need to go before the ZBA in order to, and  
21 please correct me, the planners on the Committee, please  
22 correct me if I'm wrong about this, they would need to go  
23 before the ZBA to see if the project could be allowed  
24 under that aspect of town governance.



1 I think what we have seen is that the  
2 Planning Board, the ZBA have been successful in looking at  
3 projects, and doing what was needed, in order to either  
4 approve or disapprove those. So, when we say that "the  
5 Town's been unable to do it", I think it's important to  
6 note that the Town is unable to pass a large wind  
7 ordinance, not that they have been unable to approve or  
8 not projects.

9 DIRECTOR FORBES: I don't, again,  
10 disagree with that. But I feel like, you know, the issues  
11 of, you know, significant impacts, balancing the benefits,  
12 in terms of siting, you know, the facilities, I just  
13 question whether they have the specific capability to  
14 manage this kind of project in that regard. I struggle --  
15 that's the part I struggle with the most.

16 DIRECTOR MUZZEY: In a timely way?

17 DIRECTOR FORBES: In a timely way, yes.  
18 I mean, certainly, with, you know, future deliberations on  
19 their part, they have learned a lot through these  
20 processes. You know, I'm not doubting that they could get  
21 there. But I also look at the statute requirements for  
22 "avoiding undue delay in the construction of needed  
23 facilities" and "full and timely consideration of  
24 environmental consequences". That seems to be where I --

1 I struggle the most, in terms of, you know, the confidence  
2 I have that they could do that.

3 CHAIRMAN HONIGBERG: Well, just a quick  
4 comment in response to the second of those concerns  
5 regarding environmental reviews. A lot of that is going  
6 to happen at the State, whether it's done through the SEC  
7 or done at the Town level. You know, the Department of  
8 Environmental Services will have something to say about  
9 this, regardless of who's reviewing it. And, there will  
10 be, I think, I mean, unless I'm misunderstanding how this  
11 all works, other State agencies will have jurisdiction  
12 over aspects of this Project.

13 DIRECTOR FORBES: I think one of the  
14 most significant areas where I think that will be lacking  
15 is the issue of aesthetics, and valuing the impacts of  
16 those types of considerations.

17 CHAIRMAN HONIGBERG: Other thoughts?  
18 Commissioner Scott.

19 COMMISSIONER SCOTT: Sure.

20 CHAIRMAN HONIGBERG: I can always count  
21 on you.

22 COMMISSIONER SCOTT: That's nice to  
23 hear. Again, the other component of this, as I mentioned,  
24 is, obviously, a "material change" to the existing

1 Project. What I'm certainly not interested in, if we were  
2 to take jurisdiction, is wasting the time and resources of  
3 the Committee, Counsel for the Public, the Town,  
4 Intervenors, etcetera.

5 Having said that, again, I have to  
6 remind myself, we're talking just whether we take  
7 jurisdiction or not, not whether we issue a certificate.  
8 When I look at, you know, a multiplicity of issues, but,  
9 again, nine verse ten towers, that in itself, I believe,  
10 would be very clear, if they had already had a  
11 certificate, and in construction they decided to make that  
12 change, that would require them to come back for a  
13 modified certificate. I think that's pretty clear that  
14 that type of change would be considered, at that level, a  
15 "material change", such that they would need a certificate  
16 change.

17 So, I struggle with saying that, in  
18 aggregate, all the changes made to the Project aren't  
19 "material". I try to balance that with "would there be a  
20 different outcome or a potential for a different outcome  
21 with the Committee?" I view that as a potential. Having  
22 said that, I think it would be obvious to everybody, the  
23 less impact the project would have, the less opposition,  
24 the more likely it would be to be approved, I suspect.

1                   So, on the subject of "material change",  
2                   I think that would argue for taking jurisdiction.

3                   CHAIRMAN HONIGBERG: Okay. Now I'm  
4                   going to take on your earlier statement in the context of  
5                   responding somewhat to that. I don't believe that the  
6                   standard for a certificated project to have to come back  
7                   to the SEC if it needs to change something is related in  
8                   any way to the issue that's before us right now, whether a  
9                   project -- a proposal that was rejected is sufficiently  
10                  different to militate in favor of a different result  
11                  should something happen.

12                  I think, if we take jurisdiction, and  
13                  the parties will be in a position to litigate how  
14                  different it is and whether some legal doctrines of issue  
15                  preclusion or claim preclusion might -- or, might mandate  
16                  a particular result.

17                  With respect to Public Counsel's  
18                  witness's position on this, I didn't hear her testimony  
19                  quite as starkly as you did, in terms of what she was  
20                  saying. I think the position she's taking is "I know what  
21                  the problems were with the last proposal", or at least  
22                  problems that -- putting myself in her shoes, "I know what  
23                  the problems I saw with the last one were. I know the  
24                  changes they're proposing or they have outlined in this

1 docket. All of the adverse consequences that I saw in the  
2 first one are still present. I don't need to do any  
3 additional work to know that, because I know what they  
4 proposed, and I know what changes they have proposed.  
5 And, I know, from the earlier work, that that's -- all of  
6 the same adverse consequences and impacts are there."

7 So, the materiality for her is in  
8 whether there's a material difference in the adverse  
9 impacts of the proposal. Not whether there's a 10 percent  
10 difference in the number of square feet covered or a  
11 10 percent or 12 percent difference in how many towers  
12 there are.

13 So, I mean, I honestly believe that  
14 that's a litigation for another docket, if we take  
15 jurisdiction. And, it's going to get litigated to the  
16 hilt, I suspect.

17 It is -- it may be significant to me, as  
18 I sit here further and continue with the discussion, about  
19 whether, understanding that we are not required to take  
20 jurisdiction, whether, based on what I know or what I  
21 think I know, I would be willing to say "boy, this is  
22 awfully similar to what the Committee already rejected.  
23 Wouldn't it be kind of a waste of state resources to get  
24 involved in reviewing it again?" I don't think I'm there.

1 I don't think that's where I am.

2 I think, if, as we go through the  
3 provisions of 162-H:1 and the purposes, if we, on balance,  
4 conclude that it makes sense to take jurisdiction, it's  
5 going to make sense to take jurisdiction, understanding  
6 that that similarity issue is still going to be present in  
7 the next docket.

8 Director Forbes.

9 DIRECTOR FORBES: Yes. I would  
10 absolutely agree with that. I don't think that we're here  
11 today to make a determination of whether or not there's a  
12 material difference. I think that's for another day, if  
13 we choose to take jurisdiction.

14 I think we do need to keep our focus on  
15 the conditions of 162-H. I don't think that we either  
16 heard enough testimony or analyzed the depth of these  
17 reports and studies that have been done to make a  
18 determination if it's adequately changed to grant a  
19 certificate. I think we're really just talking about  
20 jurisdictional issues consistent with 162-H. And, you  
21 know, for me, I'm just not finding it compelling to dwell  
22 on the issue of how different this might be.

23 CHAIRMAN HONIGBERG: That, to me, is a  
24 cue. And, since no one jumped up to their microphone, I

1 mean, I have the language of 162-H:1 in front of me, at  
2 least I think this is the language of it. And, there  
3 are -- but they're broken out more -- off the record.

4 (Off the record.)

5 CHAIRMAN HONIGBERG: Back on the record.  
6 There are, depending on how you slice it, five things  
7 we're supposed to take into consideration as the purposes  
8 of 162-H:1. And, I'm just going to go through them one at  
9 a time, and maybe we would have a discussion about each  
10 one, and say whether we think it would be furthered for us  
11 to take it, or not take it, and whether it would be any  
12 different -- whether the situation would be any different  
13 if the Town were ultimately responsible for all reviews or  
14 the reviews that we would do.

15 And, the first one is -- the first  
16 purpose of the statute is "to maintain a balance among  
17 those potential significant impacts and benefits in  
18 decisions about the siting, construction, and operation of  
19 energy facilities in New Hampshire". That says nothing  
20 about timing or anything, it is just "maintain that  
21 balance".

22 Does anyone think that we are the only  
23 ones who could do that? That the Town couldn't? That the  
24 Town would be better at it? I personally don't see much

1 of a difference there.

2 MS. WEATHERSBY: Yes. I think the Town  
3 could do it. We may be better at it. But I think that  
4 they could do it. And, I think a negative impact would  
5 be, if we did accept jurisdiction, whether that would  
6 essentially be a waste of time and resources. I don't  
7 know if it's reasonable -- I don't think it's reasonable  
8 to assume that this Committee would reach a different  
9 outcome, and it goes back to the "material change"  
10 argument, but I don't find that the Project is materially  
11 different in its size or its impact.

12 And, so, I kind of come back to "if it's  
13 not that different, why go through it all again." In the  
14 last, I'm getting back to the "material change" part, but,  
15 in the last docket, it seemed as though the Committee was  
16 really concerned about the scale of the Project, and that  
17 hasn't changed considerably, with the elimination of the  
18 tower and the shortening of Tower 8 and a slight  
19 shortening of the others, and the other changes, hasn't  
20 really addressed the scale, which seemed to me to be the  
21 major impact. And, I don't think that there's a  
22 reasonable possibility that this Committee will reach a  
23 different outcome.

24 So, on balance, the Town doing it versus



1 us doing it, I think it tips towards the Town having a  
2 crack at this.

3 CHAIRMAN HONIGBERG: Director Muzzey.

4 DIRECTOR MUZZEY: And, I would also note  
5 that this first section of 162-H:1, it doesn't say who  
6 would be best at it. Nor do I think we can adequately  
7 judge who would be best at it. Certainly, the State and  
8 the Town may come at this Project from different  
9 perspectives, but we don't need to judge today who would  
10 be best at it. We just need to ensure that there's a  
11 balance among the potential significant impacts and  
12 benefits.

13 And, this Project, to me, is an unusual  
14 situation, because it has come before the Site Evaluation  
15 Committee twice now. It's been in development for some  
16 time. It was a fully developed application. So many  
17 issues were discussed, that I think a lot of the issues  
18 under this first section of 162-H have already been  
19 discussed and balanced.

20 CHAIRMAN HONIGBERG: The second, the  
21 second identifiable factor is the statute's directed to  
22 "avoid undue delay in the construction of needed  
23 facilities". I think there are some statements already  
24 been made that, if we don't do it, it may be more delayed.

1 I think there's also a view that it's going to get  
2 litigated everywhere, and I don't know how significant the  
3 difference in delays will be due to the litigation. But I  
4 don't know.

5 Director Muzzey.

6 DIRECTOR MUZZEY: Well, I agree with you  
7 100 percent, there's a lot we don't know here. And, I  
8 think it's important for us not to try to predict the  
9 future in either a rosy light or a negative light.

10 Again, the fact that this Project has  
11 been discussed at both the local and state levels for some  
12 time now convince me that, at this point, neither the Town  
13 nor the State can guarantee undue delay.

14 CHAIRMAN HONIGBERG: The next factor is  
15 that there be a "full and timely consideration of  
16 environmental consequences". I'm not sure that it  
17 matters, that there's any -- that that factor or that  
18 consideration militates one way or the other, in terms of  
19 the jurisdiction on this, because I think there's enough  
20 other entities that will have review either way, that  
21 that's not dispositive.

22 Does anybody disagree with that?

23 (No verbal response)

24 CHAIRMAN HONIGBERG: Seeing none. The

1 fourth is that "all entities planning to construct  
2 facilities in the state be required to provide full and  
3 complete disclosure to the public of such plans".

4 Any thoughts on that? Commissioner  
5 Scott. Oh, I'm sorry. I thought you were reaching for  
6 the "on" button on the microphone.

7 COMMISSIONER SCOTT: I wasn't. But I  
8 presume, on that level, you know, it says "be inquired  
9 to", I assume, whether it would be at the town or at the  
10 state level, the legal requirements, I assume, are all  
11 there for disclosure. And, so, I'm not sure that's a  
12 differentiating factor in itself.

13 CHAIRMAN HONIGBERG: Director Muzzey.

14 DIRECTOR MUZZEY: And, thinking back to  
15 previous jurisdiction decisions by the Site Evaluation  
16 Committee, if we think of the Lempster Wind facility, with  
17 that facility, I believe there wasn't any zoning in the  
18 Town of Lempster. There wasn't a planning board, there  
19 was not a ZBA. And, so, they really did not have the  
20 format to have public discussions of the potential  
21 project. And, so, with the State taking jurisdiction, the  
22 public was offered that ability.

23 In this case, we do know there are, at  
24 the local level, there are rules in place to provide that

1       format.

2                               CHAIRMAN HONIGBERG:   The last  
3       consideration in that section of the statute is that "the  
4       state ensure that the construction and operation of energy  
5       facilities is treated as a significant aspect of land-use  
6       planning in which all environmental, economic, and  
7       technical issues are resolved in an integrated fashion."

8                               Commissioner Scott.

9                               COMMISSIONER SCOTT:   A couple points.  
10      Obviously, there are State agencies that govern some of  
11      this, for instance, the environmental issues involved.  
12      Lacking their regulation, they have tried three times to  
13      do it at the state level.  I think I would question the  
14      broader implications here that the Committee does provide  
15      certainly economic, technical, aesthetics, etcetera.  So,  
16      it's not as clear to me, in that capacity, that the  
17      municipality can provide the same function as a state for  
18      that.

19                            Also, as a bridge for all of these, as  
20      my earlier statement mentioned, to me, I can't help but  
21      look at these in the context of, again, we have the  
22      municipality, the Planning Board, the Board of Selectmen  
23      saying they think "these things would be better addressed  
24      at the state level", that really colors my thinking on all

1 of these things.

2 CHAIRMAN HONIGBERG: Director Muzzey.

3 DIRECTOR MUZZEY: I certainly can agree  
4 with you that the Town did say they felt that way, but I  
5 just come back to the reasoning that I heard so often in  
6 testimony is that they are hoping to avoid a lawsuit, and  
7 that was -- that was the overriding reason I heard. Not  
8 that we had greater ability or, you know, a more  
9 integrated review. It was their hope to avoid lawsuits.

10 CHAIRMAN HONIGBERG: Is there anyone  
11 else who wants to comment on what Commissioner Scott and  
12 Director Muzzey were just --

13 MS. WEATHERSBY: I have a question. The  
14 fifth factor relates to the "construction and operation of  
15 the energy facility". And, other than DES, once the -- as  
16 the facility is being built and when it operates, is there  
17 oversight by the PUC or any other regulatory agency?

18 CHAIRMAN HONIGBERG: With respect to the  
19 PUC, the answer is "no". A generating facility would not  
20 be regulated by the Public Utilities Commission. It would  
21 be, I think, Department of Environmental Services might  
22 well have, Fish & Game. I mean, there are other entities  
23 that have jurisdiction over aspects of any kind of  
24 facility that does any kind of thing within the state.

1 But it would not be the PUC. But the SEC would have  
2 continuing jurisdiction over operation -- construction,  
3 and then operation of the facility, that is consistent  
4 with any certificate that is granted.

5 MS. WEATHERSBY: If we assume  
6 jurisdiction?

7 CHAIRMAN HONIGBERG: Yes. I think  
8 that's true.

9 MS. WEATHERSBY: Okay. Great. Okay.  
10 Thank you.

11 CHAIRMAN HONIGBERG: One thing I want to  
12 circle back to, and one of the things we've been doing is  
13 sort of shorthanding the significant impacts and benefits  
14 which are listed in what we're looking at as that first  
15 factor. But those are actually -- those actually refer to  
16 a provision of 162-H:1 or a part of it that is before  
17 those findings. And, I'm going to read that, so we all  
18 have it in mind and can discuss it perhaps.

19 That the very first sentence of RSA  
20 162-H:1, the "Declaration of Purpose", says: "The  
21 legislature recognizes that the selection of sites for  
22 energy facilities may have significant impacts on and  
23 benefits to the following: The welfare of the population,  
24 private property, the location and growth of industry, the

1 overall economic growth of the state, the environment of  
2 the state, historic sites, aesthetics, air and water  
3 quality, the use of natural resources, and public health  
4 and safety."

5 And, then, the next sentence is  
6 "Accordingly, the legislature finds that it is in the  
7 public interest to maintain a balance among those  
8 potential significant impacts and benefits".

9 So, those are the types of things, in  
10 that first factor, that we should be keeping in mind. So,  
11 I'm going to sort of reopen that first topic we were  
12 talking about in the list of concerns, see if anybody has  
13 any thoughts on how our taking of jurisdiction furthers  
14 that "Purpose" clause.

15 And, let's take a moment to think about  
16 that. No. Director Rose -- Commissioner Rose, sorry.

17 COMMISSIONER ROSE: Thank you. That is  
18 a very broad mandate that the RSA 162-H:1 provides. And,  
19 I do feel that the State is in an effective position  
20 perhaps more so than the Town to be able to look at all of  
21 those elements in a more holistic fashion. And, again,  
22 I'll reiterate the fact that we did have the two elected  
23 bodies of the Town, with regards to the Planning Board and  
24 the Selectboard, requesting our jurisdiction on this. I

1 think, as Director Scott referenced, does make me look  
2 toward a more favorable position of considering that  
3 jurisdiction.

4 CHAIRMAN HONIGBERG: Any other thoughts?  
5 Does anyone want to make a motion? Do we want to take a  
6 break and give everybody a chance to think about things?

7 (No verbal response)

8 CHAIRMAN HONIGBERG: Let's take a break.  
9 We're going to break for ten minutes, come back at 25  
10 minutes to 11:00.

11 (Recess taken at 10:25 a.m. and the  
12 deliberations resumed at 10:40 a.m.)

13 CHAIRMAN HONIGBERG: All right. We're  
14 going to go back on the record. I am at people's  
15 disposal. Do people want to discuss further what we  
16 heard, what the factors are, what the considerations are?  
17 Does anybody want to make a motion, and, in that way, spur  
18 a discussion in a particular direction?

19 I see no one jumping, except  
20 Commissioner Scott. So, Commissioner Scott, go ahead.

21 COMMISSIONER SCOTT: I would not want to  
22 disappoint the Chair.

23 I'd like to move that we take  
24 jurisdiction of the Project, with the caveat that the



1 application would need to be filed within the next six  
2 months.

3 CHAIRMAN HONIGBERG: Is there a second  
4 for that motion?

5 COMMISSIONER ROSE: Second that motion.

6 CHAIRMAN HONIGBERG: All right.  
7 Commissioner Rose has seconded Commissioner Scott's  
8 motion.

9 Commissioner Scott, do you want to speak  
10 to your motion?

11 COMMISSIONER SCOTT: Again, as we  
12 discussed in deliberations now, and we've heard,  
13 obviously, throughout this proceeding, I will caveat this  
14 by saying, to me, this is not an obvious or an easy  
15 decision either way. And, again, I want to remind  
16 everybody that, you know, my interest, and I think we --  
17 the arguments that are tilted towards taking jurisdiction  
18 are not at all the same as whether the Project should be  
19 approved. And, frankly, we don't even have an application  
20 before us on that end.

21 But, as I've mentioned, I think what  
22 tilts me most in favor, as my comments have probably  
23 indicated, is the desires of the Town, the municipality,  
24 that, to me, underlines, maybe not a physically

1 impossibility of the Town taking this, but, certainly, it  
2 indicates that there are issues at the Town level. And,  
3 again, as evidenced by the multiple attempts on getting a  
4 large wind ordinance within the Town. That, to me, again,  
5 it doesn't necessarily mean the Town is voting in favor or  
6 against of a wind project, but merely setting conditions  
7 by which that would be looked at and potentially approved.

8 So, failure to do that, to me, is very  
9 telling in meeting appropriately the intent of 162-H.

10 CHAIRMAN HONIGBERG: Would anyone like  
11 to speak on Commissioner Scott's motion?

12 Director Muzzey.

13 DIRECTOR MUZZEY: I remain convinced  
14 that we're not called upon to judge whether or not the  
15 State or the Town would be better at meeting the purposes  
16 of RSA 162-H:1. Our charge is to make sure those purposes  
17 are addressed. And, I continue to feel that the Town does  
18 have adequate resources to address the purposes of  
19 162-H:1. And, in fact, in some cases, they may -- they  
20 may be the better body to do so.

21 So, I would need to disagree with the  
22 motion.

23 CHAIRMAN HONIGBERG: Ms. Weathersby.

24 MS. WEATHERSBY: I would echo Director

1 Muzzey's comments. I think that the SEC may be better  
2 suited than the local boards to deal with the application  
3 in a more holistic manner, taking into account the impacts  
4 on all the various populations and entities listed in the  
5 statute. But it doesn't mean that the local boards can't  
6 also do a good job.

7 And, I think that, just because we may  
8 be better able to handle it, doesn't require us to accept  
9 jurisdiction, particularly when this Board has already  
10 considered a very similar project and has denied the  
11 application. It would seem an absurd result to accept  
12 jurisdiction to only reach the same end.

13 And, I'm not prejudging any application.  
14 I am actually rather intrigued by the Project and would  
15 like to know more. But as -- getting over the  
16 jurisdictional issue is a problem for me.

17 I think that the local -- the goals of  
18 the statute can be met by the Town without the SEC  
19 accepting jurisdiction, again, primarily because the  
20 Project is materially or substantially similar to that in  
21 size and impact in what we have already considered.

22 CHAIRMAN HONIGBERG: Director Forbes.

23 DIRECTOR FORBES: I find it a motion I  
24 can support. I really think there's a difference here

1       between, you know, the purpose that's specified here in  
2       the statute for this Committee to ensure that, you know,  
3       these interests and such are met. And, it's speculative,  
4       I feel it's speculative to me to assume that the Town of  
5       Antrim is prepared to deal with the complexity of the  
6       Project. And, I'm compelled by the failure to be able to  
7       pass an ordinance. I think that they do have authority,  
8       they do potentially have the capacity.

9               But, I think, because it feels so  
10       speculative, I think that it's the duty of this Committee  
11       to ensure that the purposes of RSA 162 are met. So, I  
12       would support the motion.

13               CHAIRMAN HONIGBERG: Other comments on  
14       the motion? Commissioner Rose.

15               COMMISSIONER ROSE: Thank you, Mr.  
16       Chairman. I will be comfortable supporting the motion.  
17       And, the Committee does not -- is not required to take  
18       jurisdiction, but it may take jurisdiction over certain  
19       renewable energy projects -- energy facilities under  
20       30 megawatts, of which this is. And, as we've discussed,  
21       the interests of the community, based on their elected  
22       officials, are requesting this. And, I do believe that  
23       the State has the capacity by which to provide a more  
24       holistic approach in reviewing all the different

1 components as outlined in RSA 162-H.

2 I do not predetermine any outcome. I  
3 believe the previous docket that was brought before the  
4 SEC, in recognizing the aesthetic impacts, were very  
5 significant. And that, as an agency that I represent,  
6 take that very seriously, and is a very high bar to clear.

7 But, at the same time, I do feel as  
8 though that this is a matter of jurisdiction, and I'm  
9 comfortable with the SEC moving forward accepting that  
10 jurisdiction.

11 CHAIRMAN HONIGBERG: Any other comments?

12 (No verbal response)

13 CHAIRMAN HONIGBERG: I will state my  
14 opinion that this is an extremely close question. I think  
15 that, for the reasons that both sides have just  
16 articulated, I could see either motion, to accept  
17 jurisdiction or to reject it, being supportable and  
18 justifiable on this record. I think, in a close call like  
19 this, I'm inclined to vote in favor of taking jurisdiction  
20 at this time, understanding that some of the issues that  
21 the -- those objecting to jurisdiction have made will be  
22 equally usable by them in a proceeding on an application.

23 I believe that there are significant  
24 hurdles that the Applicant will have to overcome

1       substantively, and even making sure that they are  
2       sufficiently different to avoid some issue or claim  
3       preclusion type of motion that I think we can't resolve on  
4       the record that we have before us and shouldn't try to.

5               So, I will -- I plan to vote in favor of  
6       the motion.  Although, I wasn't sure about that until  
7       about 30 seconds ago.

8               Is there any further discussion?

9               (No verbal response)

10              CHAIRMAN HONIGBERG:  Seeing none, are  
11     you ready to vote on the motion?  I think you are.

12              Will all those in favor signify by  
13     raising your hand, I think, because I know we're going to  
14     have some "no" votes?

15              (Show of hands.)

16              CHAIRMAN HONIGBERG:  So, Commissioner  
17     Scott, Director Forbes, Commissioner Rose, and Mr. Hawk  
18     and I are all voting in favor.

19              Those opposed?

20              (Show of hands.)

21              CHAIRMAN HONIGBERG:  That's Ms.  
22     Weathersby and Director Muzzey.  So, the motion carries  
23     five to two.

24              Is there any further business we need to

1 take up or would like to discuss before we adjourn?

2 (No verbal response)

3 CHAIRMAN HONIGBERG: I am reminded there  
4 was a pending motion for leave to file additional  
5 memorandum, that motion was objected to by the parties.  
6 The motion is granted, the filing is accepted, and will  
7 be -- and was considered for what it was worth, I think as  
8 was apparent from the discussions.

9 We will be working on an order  
10 memorializing the decision that was just made. I don't  
11 think it will be coming out in the next couple of weeks,  
12 it will be longer than that. I would say probably four to  
13 six weeks before there's an order, given people's  
14 schedules. But we will get an order out as quickly as we  
15 can.

16 Anything else from anyone?

17 (No verbal response)

18 CHAIRMAN HONIGBERG: Thank you all for  
19 your time. I thank the members of the public for coming  
20 and expressing their interest in this. And, I thank the  
21 members of the Subcommittee for their hard work. We are  
22 adjourned.

23 **(Whereupon the deliberations were**  
24 **adjourned at 10:52 a.m.)**

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**C E R T I F I C A T E**

I, **Steven. E. Patnaude**, a Licensed Court Reporter, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of these proceedings taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action; and further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

---

Steven E. Patnaude, LCR  
Licensed Court Reporter  
N.H. LCR No. 52  
(RSA 310-A:173)